## APPENDIX

## IN THE ORPHANS' COURT OF MONTGOMERY COUNTY

No. 66,759

TRUST INTER VIVOS: MARY HANLON TOWNSEND, SETTLOR

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No. 66,431

ESTATE OF MARY H. TOWNSEND, (also known as MARY HANLON TOWNSEND,) DECEASED

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## OPINION AND DECREE SUR MOTION TO DISMISS APPEAL FROM PROBATE AND PROCEEDING TO HAVE INTER VIVOS DEED OF TRUST DECLARED INVALID.

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APPEARANCES:

ELVIN R. SOUDER, ESQ., JOHN A. EICHMAN, 3RD, ESQ., HENRY I. KOPLIN, ESQ., and ALEXANDER A. ZVEGINTZOV., ESQ., for Mary Townsend Cochran, contestant;

WRIGHT, SPENCER, MANNING & SAGENDORPH, by WILLIAM P. MANNING, JR., ESQ., and MACCOY, EVANS and LEWIS, by WILLIAM M. MARUTANI, ESQ., and PHILIP A. BREGY, ESQ., for The Children's Hospital of Philadelphia, Father Flanagan's Boys Home, and American Cancer Society, Philadelphia Division, Inc., proponents;

SMITH, AKER, GROSSMAN & HOLLINGER, by J. BROOKE AKER, ESQ., and DECHERT, PRICE & RHOADS, by ARTHUR C. DORRANCE, JR., ESQ., for George L. Morris and Girard Trust Bank, trustees under deed, proponents;

JOSEPH NEFF EWING, ESQ., and THOMAS S. WEARY, ESQ., for Bryn Mawr Hospital, proponent;

WATERS, FLEER, COOPER & GALLAGER, by DONALD A. GALLAGER, ESQ., for Girard Trust Bank, administrator pendente lite;

DANIEL L. QUINLAN, JR., ESQ., and THOMAS B. HARPER, III, ESQ., for Lillian R. Kelly, respondent;

FOX, DIFFER, DIGIACOMO & LOWE, and JAMES E. GALLAGHER, JR., ESQ., for Most Reverend John J. Krol, Archbishop of Philadelphia, and for St. Vincent's Hospital for Women and Children, proponents;

VINCENT C. VALDORALE, ESQ., for Right Reverend Monsignor Aloysius F. X. Farrell, proponent;

* * * *

TAXIS, P.J.

These proceedings were instituted by Mary Townsend Cochran, a niece of decedent's husband, to challenge the validity of decedent's last will dated June 14, 1965, as well as her inter vivos deed of trust dated July 11, 1963 and three later amendments thereto. Decedent died on October 1, 1965.

The will was of the "pour-over" type and gave substantially all of decedent's estate to the existing inter vivos trust. As originally created, this trust provided a life estate for Mrs. Townsend, and subsequent interests for the benefit of the contestant herein and her issue. This deed was first amended on February 20, 1964, the settlor at that time substituting certain charities for con-

testant and her issue. This basic pattern was continued in the amendment of March 6, 1964, except that the charities named were changed to Boys Town, Bryn Mawr Hospital, American Cancer Society, and the Children's Hospital, each with a one-fourth interest.

By June 14, 1965, testatrix had transferred a substantial portion of her assets to the trust account, and consequently her existing will was revised to the one here under attack. Certain legacies were removed from the will to the amended deed of trust, the principal alteration of interest here being reduction of contestant's $100,000 legacy to one of $10,000.

When decedent's will was offered for probate, it met with an informal caveat filed by contestant. The matter was certified to this Court by the Register of Wills, and a formal caveat was filed, on October 18, 1965. Objections as to the sufficiency of this caveat were filed and sustained by the Court, but leave was given to file a supplemental caveat. This was submitted on December 3, 1965, but this again was declared insufficient in law upon objection.

Throughout this proceeding, contestant has sought extensive discovery prior to hearing, including the taking of depositions of numerous persons, as well as the production of documents and records covering a period of many years prior to the execution of the will and deed of trust, together with much correspondence between Mrs. Townsend and her counsel and financial representatives. This discovery was claimed on the authority of *Thompson Will*, 416 Pa. 249, where the Supreme Court indicated that requests for discovery in matters such as these should be considered "with liberality as the rule," in holding that an appellant from probate should be given an opportunity to amend his original appeal when it is adjudged inadequate in law.

Much of the material sought by contestant through discovery was made available voluntarily, without requiring an order of Court. Other material was justifiably withheld as privileged or irrelevant. The Court also allowed the depositions of six important witnesses to be taken, which testimony covered more than one thousand transcribed pages. Subsequent to all of this discovery, contestant filed a second supplemental caveat.

Preliminary objections were again filed to the second supplemental caveat. After these objections were argued and briefs filed, the Court entered an order on October 3, 1966, dismissing the preliminary objections and ordering the case to hearing. Before passing to a discussion of the merits, we feel impelled to point out that the defects which existed in the original and supplemental caveat continued to be present to a disturbing extent in the second supplemental caveat as well. Although the various grounds upon which contestant relies to attack the documents in question are at one point or another set forth therein as legal conclusions, the substance of the thirty-four page document is often vague and uncertain, and contains an array of suspicions, conjectures and assumptions not properly in such a pleading and not relevant to a determination of issues. From an excess of caution, however, and in an attempt to dispose of this controversy with some degree of dispatch, we have allowed it to be heard on its merits.

Caveator attacks the documents in question for almost every basic reason that could be advanced to invalidate them. These include lack of testamentary capacity, undue influence, forgery, fraud, misrepresentation, and conspiracy. Because of the fact that there are five instruments actually involved, and because of the simple pour-over nature of the will, these proceedings were consolidated for purposes of the hearing and can be disposed of together. The said five documents are all adverse to contestant's interest, and consequently all five must be suc-

cessfully invalidated by her for her to succeed in the present proceeding.

The hearing proceeded in a conventional fashion. The proponents recognized their initial burden of proving the execution of the challenged instruments, and did so by virtue of the testimony of the various subscribing witnesses thereto, who were John Bishop, IV, Esq., William Blackman, Gladys Ayres, Philip Price, Esq., and Lillian R. Kelly. The testimony of these witnesses, all of whom appeared highly credible even under the intensive cross-examination to which contestant's counsel subjected them, amply proved the execution of the five instruments, and the conclusion at this point was inescapable that they were properly executed, by a person who had the capacity to do so and who was not at the time acting under any influence to do something which she did not wish to do.

Under normal procedures, this cast upon contestant the burden of producing evidence to overcome the presumption of validity which was established by this testimony. Contestant at the hearing, and later upon argument, contended, however, that in this case such a rule should not have been followed, inasmuch as her allegation of forgery left the matter of valid execution still in doubt and unproven. Contestant points out that Miss Kelly was required to assist Mrs. Townsend in the mechanical execution of her signature on one occasion and also that documents executed at the same time do not have the same witnesses; further, that physical examination of the signatures shows that they are not all the signatures of the same person and that physical discrepancies can be discerned in the writings if a strong light is used in their examination.

We do not consider these observations convincing in the light of the unequivocal testimony of the subscribing witnesses; but even if we did, we do not think they would be germane to the problem. We are not holding, at this

point, that the execution of these documents was conclusively proven or that that issue goes out of the case. We are dealing only with the orderly presentation of evidence, and the rules which the law has fashioned to permit a logical trial of these issues. The fact that forgery of these documents was alleged cannot affect the shifting of the so-called burden of proof, any more than allegations of other defects.

In this connection, contestant cites *Cressman Est.*, 346 Pa. 400, 404, where the Supreme Court quoted with approval the following language of the opinion in the Court below:

> "Where a will was properly executed in every particular, a presumption of testamentary capacity and lack of undue influence arises, compelling evidence to upset the will, since the law favors its validity, unless it appears that the testator for some time prior to its execution has been mentally incapable of transacting business, in which event the burden of proof is on the proponent of the contested will . . ."

Apart from the fact that this does not infer that any special problems are raised by an allegation of forgery, this language does nothing to undermine the rule that after proof of proper execution, the burden of upsetting a will is upon contestant. In *Cressman Est.*, supra, it seems clear that the burden of showing that the testator had been "mentally incapable of transacting business" would be placed upon the contestant; only *after* he meets this burden, would the proponent be required to proceed with further proof of the validity of the will. We specifically hold, therefore, that the burden of producing evidence to invalidate the documents in question passed to the contestant after the proponents duly proved their execution.

We consider now the various grounds alleged by contestant for her attack on the documents before us. The

first is lack of testamentary capacity which, although technically applicable only to the will, carries with it inferentially the allegation of a lack of legal competence in the execution of the deed of trust. Contestant concedes, however, that no evidence of a lack of testamentary capacity or of incompetence on the part of decedent was produced.

A somewhat more complex problem exists in the case of the allegation of undue influence. Contestant argues principally that Mrs. Townsend was so mentally and physically infirm that she became unnaturally susceptible to the undue influence of her close and confidential advisers, which in turn imposes upon them the obligation to come forth with evidence to prove the lack of exercise of any such influence by them. See *Paul Will*, 407 Pa. 30. There are several insurmountable factual and legal difficulties with this position.

First, contestant depends for her evidence of decedent's infirmity chiefly upon the testimony of Dr. James D. Ripepi, an obviously qualified psychiatrist, whose testimony impressed the Court as far as it went. However, Dr. Ripepi never saw decedent. He did examine her hospital records, her X-ray and medical reports, and he acquainted himself fully with the nature and amount of the medication which she took; in short he became as well informed, *post mortem*, of the decedent's condition as a physician reasonably could be. The sum and substance of Dr. Ripepi's evidence, however, when set against the strong direct evidence of her behavior and competence, cannot convince the Court that Mrs. Townsend was so weak or infirm that she was susceptible to undue influence, over and beyond the natural effects of an age of eighty-six years combined with partial blindness. Dr. Ripepi testified to a normal decline or impairment of her mental and physical powers, stemming from her age and also from the fact that she had fractured her hip a year or more before her will and the final amendment to the deed of trust were executed. However, the law does not presume

that a wakening of intellect stems *ipso facto* from age or injury. The rule is that undue influence only occurs where there is an imprisonment of the mind and body, by fraud, threats, misrepresentation, flattery, coercion or the like, so that a testator's free actions are destroyed. Here there is absolutely no evidence to show that decedent's condition, no matter how favorably to contestant the record is read, ever approached the grim straits required by this rule.

Second, there was substantial direct testimony from witnesses who personally knew decedent well to the effect that her mental and physical faculties were intact when she executed the will and last amendment to the trust. Mr. Bishop, decedent's attorney, testified that at the time the documents were executed her mind was clear and alert and her memory was good. This was confirmed by testimony from Miss Kelly and Philip Price, Esq., as well as from George L. Morris, who was definite in his belief that Mrs. Townsend could not be influenced by anyone. Further, Dr. Edward G. Durkin, decedent's personal physician for several years, testified that he visited Mrs. Townsend on June 14, 1965, the very date of execution of the will and last trust amendment, and that he recalled that she was in good mental and physical condition at the time and was free of any substantial signs of mental deterioration. Dr. Wilfred E. Frye, decedent's ophthalmologist, also testified that when he last saw decedent she was alert and could see reasonably well for normal purposes.

Testimony to a similar effect was produced regarding decedent's condition at the signing of the deed of trust and its first two amendments. It is unnecessary, for present purposes, to detail the testimony of the various witnesses involved, as it was uniform that Mrs. Townsend signed the various papers voluntarily and without assistance, and only after a discussion of their provisions with her attorney.

We note at this point, however, that the amendment to the deed of trust dated February 20, 1964 is of special importance here, because it was therein that contestant and her issue were eliminated by decedent as primary beneficiaries of her estate. Mr. Price and Mr. Bishop discussed the reasons for this development chiefly under questioning by contestant's attorney, and it appears that Mrs. Townsend was motivated in her action by the cumulative effect of a number of circumstances. One was her belief that contestant had interfered in an unwarranted fashion with the administration of her husband's estate, by many criticisms of the actions of his personal representatives. Decedent was also annoyed by contestant's conduct in communicating with Mrs. Townsend through a domestic and not directly. In addition, decedent knew that contestant received substantial benefits from Mr. Townsend's estate, enough in themselves to guarantee her financial security. And, finally, Mrs. Townsend had always had great interest in charitable endeavors, and as she became more fully aware of the extent of her assets, she became more and more disposed to do something of definite benefit for charity.

The third obstacle to a finding of undue influence in this case lies in the admitted lack of benefit received by the alleged influencing parties. Viewing first the five documents under direct attack, and keeping in mind that those accused of exerting undue influence on testator are Mr. Bishop, Mr. Morris and Miss Kelly, we perceive immediately that Mr. Bishop is not a beneficiary under any of the documents, and that the interests created by them for Mr. Morris and Miss Kelly are identical to gifts contained in prior documents. Mr. Morris was present only at the execution of one amendment to the deed of trust, and Miss Kelly was present only at the signing of the will and the last amendment to the deed of trust, and took no part in any of the discussions preceding the execution of the papers. Nor is there any evidence that any of these

three persons had any interest in obtaining Mrs. Townsend's estate for those charities which were named by her as her residuary legatees.

Contestant argues, however, that we must go beyond the five documents, back to wills and codicils executed in 1961 and 1962, which she contends were the last valid instruments made by Mrs. Townsend, and wherein we find dispositions which do not include Miss Kelly and which give to Mr. Morris $25,000 less than he would receive under the now contested documents. There is, however, nothing in the record to justify a finding that December 31, 1962 marked the end of decedent's competence; but even if we would assume this to be the case, it would even then only vitiate the interests of Miss Kelly and Mr. Morris, which are relatively minor in decedent's testamentary scheme. *Paul Will*, supra. There is nothing substantial in this entire case which casts any doubt on testatrix's desire and competence to dispose of her estate exactly as she did.

The next allegations to consider are those of forgery. Contestant's proof of forgery is substantially confined to the testimony of Charles Andrew Appel, Jr., a retired officer of the Federal Bureau of Investigation. Mr. Appel's specialty is handwriting analysis, and he impressed the Court as a highly competent expert in that field.

Mr. Appel unhesitatingly testified that, in his opinion, the signatures on all five main documents were forgeries, and that in all likelihood these signatures were in the handwriting of Miss Kelly. He testified in detail concerning not only the five papers here directly under attack, but also regarding other documents signed by Mrs. Townsend after 1962, which he also deemed forgeries. Most of his testimony was technical and detailed, and no doubt in most cases led toward the conclusions he drew. Proponents in their brief point out inconsistencies in his evidence at some length, but we must assume that these

in no case can ever be completely eliminated. A lengthy review of Mr. Appel's testimony is not needed since the chief difficulty with it is not in its quality as opinion evidence, but rather in the weight to which such evidence is entitled in the face of the other direct testimony in the record.

In *Kadilak Will*, 405 Pa. 238, 243, the Supreme Court said:

> "Moreover, the opinion evidence of an expert, whether he be a doctor or any other kind of expert, is, in cases of forgery, undue influence, mental capacity and insanity, of very little weight and cannot prevail against direct factual credible evidence: (citing cases)."

Thus opinion evidence, although admissible because relevant, cannot be given much weight against the direct testimony of responsible witnesses such as is present here. At this juncture, we meet, head-on, a problem which lurks throughout every aspect of this case. For contestant to prevail, and her counsel so concedes, this Court would be required to find fraud and perjury which, to some extent at least, would involve two members of the Philadelphia bar, two physicians, a trusted financial representative and advisor not only of decedent but of her husband, decedent's trusted companion and nurse, and other responsible parties. There is nothing in the record to even suggest such a monstrous occurrence. We specifically hold that there has been no forgery proved.

With reference to the allegations of fraud, misrepresentation, and to the extent that it is set forth in the pleadings, conspiracy, these could be dismissed without discussion because of the failure of contestant to allege these grounds in the pleadings with even the minimum factual particularity required. However, even if the pleadings are ignored and the record reviewed as favorably to contestant as possible, there is no evidence of

fraud, misrepresentation or conspiracy as those terms are legally understood. No person is identified specifically as the perpetrator of any of these offenses. We further take it that to prove fraud or misrepresentation, there must be evidence of an intentional or at least negligent misstatement of fact, relied upon by the victim, and there is nothing in the record evidencing that such conduct was engaged in by anyone. And finally there is the same problem as existed in the case of undue influence, namely, that the principal beneficiaries of Mrs. Townsend are four charities and there was no showing whatever that any person connected with Mrs. Townsend legally or financially had the slightest personal interest in obtaining any of her property for these charities. We conclude that there is no evidence of fraud, misrepresentation or conspiracy.

In general, this disposes of the various direct arguments of contestant regarding the validity of the five instruments which she attacked. Certain other aspects of the proceedings should be discussed, however, so that there may be as little question as possible concerning the reasons for the various actions taken by this Court in the course of this litigation. The first relates to the admission into evidence of the many exhibits offered by contestant; a number of these were not admitted when offered, rulings on their admissibiilty being reserved until the record was completed. There are over one hundred exhibits actually involved, and if it were necessary to pass upon them individually many questions concerning their authentication and relevance would require attention. Now that we have heard, and carefully reviewed, the entire record, it is clear that no substantial reason exists to separate the wheat from the chaff of these exhibits, as the admission into evidence of all of them still cannot tip the scales in favor of contestant. Accordingly, all of the offered exhibits are admitted into evidence, and exceptions to this ruling are granted to the proponents.

In addition, a further allusion to the matter of discovery as it is involved in this case is in order. We have earlier stated that considerable discovery prior to hearing was permittted, upon the earnest application of contestant. After objections were filed to the second supplemental caveat, it appeared that the discovery carried out up to that time, had not enabled contestant to do more than slightly improve her prior pleadings, although she had taken lengthy depositions of all of the principal parties involved in Mrs. Townsend's affairs. It followed, therefore, that contestant's proposal to take further depositions from a vast additional number of witnesses not so closely connected to decedent constituted a "fishing expedition" in the classic mold, and it appeared unnecessary to a meaningful trial of the basic issues to permit further discovery. It must always be kept in mind that had the need or desirability of further discovery appeared at any time, this Court was in a position to continue or reschedule the hearings in the matter to permit this need to be met. Having now heard contestant's case, we have no difficulty in concluding that her right of discovery was adequately protected according to the precepts of *Thompson Will.*

Counsel for contestant, in addition to her other requests, requested a jury trial of this issue, which was refused by the Court. Considering the volume of testimony taken, including the depositions which would have been repeated in substance at a jury trial, it appears that this was a reasonable ruling. Moreover, we are constrained to point out that contestant was not harmed by this ruling, as a verdict in her favor on this record would as a matter of law have been set aside by the Court. Since we understand, however, that contestant wishes to raise a constitutional question concerning her right to a jury trial, we specifically pass upon that issue and affirm our action in refusing the same.

This matter is the typical and often repeated situation of a disappointed legatee attempting to avoid testamentary documents, after the death of their maker, which appear unfair and inequitable to him or her. The Court was impressed with the refinement and integrity of contestant and her husband, and imputes no improper motives to her. We are sure that she appreciated her relationship with the Townsends, contributed much to it, and for many years was as loyal to them as are many daughters. Nevertheless, much of the change in decedent's attitude was brought on by herself, and any event Mrs. Townsend clearly had the right, intellect and capacity to do as she did.

In this opinion, and the order to ensue from it, we are dealing specifically with proponents' motion to dismiss the second supplemental caveat and pleading attacking the deed of trust for lack of proof, that is, in effect to enter a compulsory nonsuit against contestant. Contestant argues that, regardless of the state of the proceedings in a substantial sense, the Court may not enter a nonsuit against a defendant (which status she claims she has) or even against a plaintiff (if contestant should be regarded as a plaintiff) after defendant has been allowed to introduce evidence. Contestant relies, inter alia, on the Act of 1875, P.L. 6, Sec. 1 (12 P.S. 645), but we think neither this statute nor contestant's position in general have merit as applied to this proceedings.

In the first place, the statute cited applies both by its specific language and its substance to trials in Common Pleas, and is the enactment which authorizes a trial judge in that Court to nonsuit a plaintiff who has not made out a *prima facie* case. While it is apparently true, as contestant argues, that nonsuits are not entered against defendants at trial in Common Pleas, we only confuse the present matter by insisting upon the characterization of its parties as either plaintiff or defendant. Probate, and contests over it, are actions *in rem*, for which the proce-

dure has been meticulously developed to meet the specific problems encountered in such actions. Logically, all of the litigants are plaintiffs seeking a judicial determination of the legal effect of a particular condition or set of circumstances. See *Mangold* vs. *Neuman*, 371 Pa. 496. Be the terminology as it may, the record in this litigation shows that the execution of the documents under attack has been proven by their proponents; that contestant has had a full opportunity to present her case contesting the validity of these documents, has done so and has rested; and that contestant's full case has been insufficient to discredit or invalidate any of them. Even if proponents were required to produce further evidence, contestant would be limited thereafter to rebuttal evidence. Under such circumstances, further evidence from proponents would be redundant and would serve no purpose.

## FINAL DECREE

AND NOW, March 29, 1967, it is ordered and decreed that proponents' motion to dismiss the caveat, supplemental caveat and second supplemental caveat and also the pleading attacking the inter vivos deed of trust and its amendments is allowed with prejudice; and that this action shall have the effect of the entry of a compulsory non-suit against contestant; further, that the Register of Wills is directed to probate decedent's last will dated June 14, 1965; and, that the inter vivos deed of trust dated July 11, 1963 and amendments thereto dated February 20, 1964, March 6, 1964, and June 14, 1965 are declared to be valid and enforceable at law.

BY THE COURT

/s/ Alfred L. Taxis, Jr.
President Judge

IN THE ORPHANS' COURT
OF MONTGOMERY COUNTY, PENNSYLVANIA

No. 66,431

ESTATE OF MARY H. TOWNSEND,
a/k/a MARY HANLON TOWNSEND, DECEASED

No. 66,759

TRUST INTER VIVOS: MARY HANLON TOWNSEND,
SETTLOR

DECREE

AND NOW, this 21st day of April, 1967 it is hereby ORDERED AND DECREED that:

(1) leave Nunc Pro Tunc is hereby granted to Mary Townsend Cochran, Contestant in the aboye proceedings, to file with the Court en banc her Petition to Set Aside Final Decree dated March 29, 1967 and any Judgment of Non-Suit, within the meaning of the Act of March 11, 1875, P.L. 6, that may be incorporated therein;

(2) Said Petition in the form and style attached as Exhibit B to the Petition hereto annexed be, and the same is hereby, declared filed eo die; and

(3) This Court now sitting as a court en banc hereby dismisses said Petition to Set Aside after due consideration of the same.

BY THE COURT:

/s/ Alfred L. Taxis, Jr.
P.J.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Nos. 42 and 43, January Term, 1968

ESTATE OF MARY H. TOWNSEND
(a/k/a MARY HANLON TOWNSEND, DECEASED)

APPEAL OF MARY TOWNSEND COCHRAN

Appeals from Decrees of the Orphans' Court of Montgomery County Dated April 21, and March 29, 1967, Respectively, in Estate of Mary H. Townsend, Deceased (No. 66431) on Behalf of Mary Townsend Cochran

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Nos. 44 and 45, January Term, 1968

TRUST INTER VIVOS: MARY HANLON TOWNSEND, SETTLOR

APPEAL OF MARY TOWNSEND COCHRAN

Appeals from Decrees of the Orphans Court of Montgomery County Dated April 21 and March 29, 1967, Respectively, in Trust Inter Vivos: (No. 66759) on Behalf of Mary Townsend Cochran

OPINION OF THE COURT

BELL, C. J. Filed: April 16, 1968

Mary Hanlon Townsend died October 1, 1965, leaving her last will, dated June 14, 1965, and an inter vivos Trust Deed, dated July 11, 1963, which was thereafter thrice amended. Mary Townsend Cochran, decedent's niece by marriage, has appealed to this Court from the several decrees (actually one decree which covered several subjects) of the Orphans' Court, which sustained decedent's will and her inter vivos Trust and the three

amendments thereto. The *final Decree*, from which these appeals have been taken, is as follows:

"AND NOW, March 29, 1967, it is ordered and decreed that proponents' motion to dismiss the caveat, supplemental caveat and second supplemental caveat and also the pleading attacking the inter vivos deed of trust and its amendments is allowed with prejudice, and that this action shall have the effect of the entry of a compulsory nonsuit against contestant; further, that the Register of Wills is directed to probate decedent's last will dated June 14, 1965; and, that the inter vivos deed of trust dated July 11, 1963 and amendments thereto dated February 20, 1964, March 6, 1964, and June 14, 1965 are declared to be valid and enforceable at law.

BY THE COURT

/s/ ALFRED L. TAXIS, JR.
President Judge"

We shall summarize the procedural posture of this case, which is very complex and covers some ten pages in appellant's brief, as well as the testimony which covers approximately 1,000 pages. We note that there were ten prior wills or codicils, but only the final will, dated June 14, 1965, is here involved.

Appellant has attacked five documents: (1) decedent's alleged will dated June 14, 1965, because of forgery; (2) decedent's revocable inter vivos Deed of Trust dated July 11, 1963, because of undue influence and the violation of a confidential relationship; and (3) three amendments to said Deed of Trust, dated February 20, 1964, March 6, 1964 and June 14, 1965, because of forgery.

Decedent's inter vivos revocable Deed of Trust of 1963 provided a life estate for appellant as well as a remainder

interest for her and for her issue. This 1963 Trust was first amended on February 20, 1964; this amendment substituted certain charities in lieu of several gifts to appellant and her issue. Settlor's charitable intent was continued in the March 6, 1964 amendment to the Trust, which merely substituted different charities for the previously named charitable beneficiaries. By June 14, 1965, decedent had transferred a substantial portion of her property to her inter vivos Trust and, as a result, her existing will was changed to the one here under attack, namely, her will dated June 14, 1965. Certain legacies were eliminated from the will because they were inserted into the inter vivos Trust amendments, and the principal change was the reduction of contestant-appellant's $100,000 legacy to a legacy of $10,000. Decedent died, we repeat, on October 1, 1965, and her will of June 14, 1965 was thereafter probated.

Appellant, in her very lengthy brief, has reduced her numerous objections and contentions to three questions, although in these questions she has included virtually all of her many and various contentions.

1. Appellant first contends that the Orphans' Court erred in refusing to permit the deposition of 27 (sometimes alleged to be more than 30) individuals and in limiting the testimony and depositions to six persons, who had testified or had been deposed for eight days in a transcript of over 1,000 pages. The names of these 27 desired deposing persons were culled by appellant from the answers to interrogatories served on appellees, as well as from the many documents. Appellant contends that these 27 persons are individuals "who *might be able to shed light* on the issues." * Appellant further complains that she was not given copies of "all memoranda, correspondence and writings relating to [decedent's testamentary writings] and/or other dealings of the said [executors]

* Italics, ours.

with the said decedent," and "was denied access" thereto. This contention was made after appellant had been furnished with copies of all of decedent's testamentary instruments subsequent to December 3, 1960, as well as with the originals of the five instruments she attacks. In addition, a multitude of other writings and records relating to many aspects of decedent's affairs had been tendered to appellant.

Appellant relies upon *Thompson Will*, 416 Pa. 249, 206 A.2d 21, to support her first contention. In *Thompson Will*, the Court appropriately said (page 261):

". . . Nothing in this opinion shall be construed as a bar to the allowance of discovery if the matters sought are relevant to the issue of the cause. While 'fishing expeditions' are not to be countenanced under the guise of discovery, requests for discovery must be considered with liberality as the rule rather than the exception."

Under the facts in the instant case, the Orphans' Court committed no abuse of discretion or error of law in disallowing appellant's demand for a further sweeping discovery which in reality amounted to a "fishing expedition," and these contentions of appellant are devoid of merit.

2. Appellant next contends that she has been denied her fundamental right of cross-examination because she was prevented by the hearing Judge from pursuing the questioning of Philip Price, Esq.—who was a witness to the Trust amendment dated February 20, 1964—concerning his whereabouts on that date. Price, one of Philadelphia's outstanding lawyers, had testified on direct examination that he witnessed the settlor sign the Trust amendment on that date. Appellant cross-examined Price, and during the cross-examination Price was unable to remember the exact date he went on a cruise in 1964, or the name of the boat. From this, appellant argues that Price could not have witnessed the settlor's signing of the Trust

amendment on February 20, 1964, and that that proves, or tends to prove, that the Trust amendment of February 20, 1964 was a forgery. It was appellant's expressed intention to prove that Price was not in Philadelphia on that date and, therefore, could not have witnessed the signing of the Trust amendment, and this supports her contention that the said Trust amendment must have been a forgery.

The proper scope of cross-examination is a matter for the trial Judge's sound discretion, and that discretion will be reversed by an appellate Court only for an error of law or a prejudicial abuse of discretion. *Rogan Estate*, 404 Pa. 205, 171 A.2d 177; *Littieri* v. *Freda*, 241 Pa. 21, 27, 88 Atl. 82; *King* v. *Holt*, 200 Pa. Super. Ct. 431, 435, 188 A.2d 760; *Commonwealth* v. *Minoff*, 363 Pa. 287, 294, 69 A.2d 145.

In *Rogan Estate*, 404 Pa., supra, the Court said (page 214):

"'. . . In Quigley v. Thompson, 211 Pa. 107, 109, 60 A. 506, it was said that,—"While the general principles applicable to the subject are clearly defined, it is in practice often difficult to determine the exact limits of proper cross-examination. Its range must of necessity rest largely in the discretion of the trial judge," quoted with approval in Littieri v. Freda, 241 Pa. 21, 27, 88 A. 82; see also Glenn v. Philadelphia and West Chester Traction Company, 206 Pa. 135, 137, 55 A. 860; Thomas & Sons v. Loose, Seaman & Co., 114 Pa. 35, 47, 6 A. 326.'"

The law is well and aptly stated in *King* v. *Holt*, 200 Pa. Super Ct., supra, at page 435:

". . . The scope or limitation of cross-examination is largely within the discretion of the trial judge and his action will not be reversed in the absence of abuse of that discretion, or unless an obvious disadvantage resulted therefrom to the other party."

We find no prejudicial abuse of discretion, or error of law. Moreover, appellant's contention becomes even more untenable when one considers that on the day following the Court's alleged reversible cut-off of cross-examination, counsel for Price tendered in open Court the information which had been sought and withheld. This line of questioning was not pursued by appellant, nor was the suggestion again made that Price was lying.

3. Finally, appellant argues that the trial Court had no power to grant appellees' motion for a compulsory nonsuit against her after the evidence of both the appellant and appellees had been finished, and that if it did, the decision to grant the nonsuit was against the weight of the evidence. Appellant contends that she stands in the position of a defendant and that nonsuits cannot be entered against defendants.

It will be noted, of course, that the Decree of the lower Court stated "that this action shall have the effect of the entry of a compulsory nonsuit against contestant."

Pa. R.C.P. 1512, Equity Actions, provides:

*"Non-suit*

"The court may enter a non-suit against the plaintiff under the same circumstances, subject to review in the same manner and with the same effect as in actions at law. Adopted Jan. 4, 1952. Eff. July 1, 1952."

Rule 1512 is impliedly incorporated into the Orphans' Court rules and practice by O.C.T. § 3, Rule 1. It provides:

*"Conformity to Equity Practice*

"Except where otherwise provided by a rule adopted by the Supreme Court or by an Act of Assembly, or by general rule or special order of the local Orphans' Court, the pleading and practice shall conform to the pleading and practice in equity in the local Court of Common Pleas."

While it would have been better for the Decree to have used the word "judgment" instead of "compulsory nonsuit," the language used did not constitute reversible error.

We have carefully considered all of appellant's contentions, and find no merit in any of them.

Decree affirmed; each party to pay own costs.

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

PATRICK N. BOLSINGER
Prothonotary

GEORGE W. DUNN, JR.
Deputy Prothonotary

Philadelphia 19107

May 27, 1968

John A. Eichman, III, Esq.
1500 Walnut Street Bldg.
Philadelphia, Pa. 19102

Re: Estate of Mary H. Townsend, a/k/a
Mary Hanlon Townsend, Deceased
Appeal of: Mary Townsend Cochran
Nos. 42/45 January Term, 1968

Dear Sir:

This is to advise that the following Order has been endorsed on the Petition for Reargument filed on behalf of

the Appellant in the above captioned case and also the Supplemental Petition thereto:

"Per Curiam: 5/24/68.

Petition denied."

Very truly yours,

/s/ Patrick N. Bolsinger
PATRICK N. BOLSINGER
Prothonotary

PNB/k

cc: Thomas B. Harper, III, Esq.
Vincent C. Veldorale, Esq.
Philip A. Bregy, Esq.
Joseph Neff Ewing, Esq.
Arthur C. Dorrance, Jr., Esq.
Benjamin R. Neilson, Esq.
James E. Gallagher, Jr., Esq.
Charles A. Woods, Jr., Esq.

MR. AKER: I was just going to say, your Honor, that while it is out of place for us to proceed first, we have spoken to Mr. Eichman and he has some motions and things he wishes to discuss.

THE COURT: He has filed one motion. I received one by mail.

MR. EICHMAN: Yes.

THE COURT: Perhaps you are about to mention now, are you?

MR. EICHMAN: Yes sir, your Honor.

These (indicating) are the originals two original copies of that motion that I sent to your Honor and all counsel, listing formal objections and requests for exceptions in matters leading up to this trial.

THE COURT: I have read that motion a couple of times and, am I correct in my observation that it is an effort to preserve, for any appeal or argument, or any errors, to help you to allege—

MR. EICHMAN: That's right, your Honor.

THE COURT: (Continuing)—that the Court commited *en route* to the hearing today?

MR. EICHMAN: That's right, your Honor.

THE COURT: So that there is nothing I need act upon before we proceed? I will just take the matter under advisement and rule upon it,—

MR. EICHMAN: Thank you.

THE COURT: (Continuing)—at the proper time.

But, I may ask: have the proponents any response or reply to that motion?

MR. MARUTANI: Sir, may we ask leave to consider that possibility?

As of this point, we do not believe that any answers are required.

THE COURT: There is no hurry about it. I am not going to rule on it for a while. So, you might ponder that possibility.

MR. MARUTANI: We will let your Honor know very promptly.

PANEL I
Signatures Admittedly Genuine

Exhibit "LL" Will dated June 12, 1961

Signature from Exhibit "LL"

d June 12th , 1961.

Mary Hanlon Townsend
Mary Hanlon Townsend

Exhibit "MM" Codicil dated June 14, 1962

Signature from Exhibit "MM"

Executed June 14 , 1962.

Mary Hanlon Townsend [SEAL]
Mary Hanlon Townsend

above-named testatrix signed this and declared it

Exhibit "NN" Codicil dated November 14, 1962

Signature from Exhibit "NN"

Executed November 14 , 1962.

Mary Hanlon Townsend SEAL
resence the above-named testatrix signed this and decla

PANEL II

Exhibit "SS" Alledged Deed of Trust Amendment dated January 17, 1964

Signature from Exhibit "SS"

Executed January 17 , 1964.

Mary H. Townsend [SEAL]
Mary Hanlon Townsend

Exhibit "B" Writing of Lillian Kelly taken at depositions on June 27, 1966

Signature from Exhibit "B"

Mary H Townsend

CHART OF GIFTS UNDER ADMITTED AND ALLEGED TESTAMENTARY DOCU
MARY HANLON TOWNSEND DATED AFTER DECEMBER, 1960

| | | NO ORIGINAL | GENUINE | GENUINE | GENUINE | | FORGED | FORGED | FORGED | FORGED | NO ORIGINAL | FORG |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Ex. F Codicil Dtd. 2/23/61 | Ex. LL Will Dtd. 6/12/61 | Ex. MM Codicil Dtd. 6/14/62 | Ex. NN Codicil Dtd. 11/14/62 | | Ex. OO Codicil Dtd. 4/30/63 | Ex. Two Deed of Trust Dtd. 7/11/63 | Ex. PP Will Dtd. 7/11/63 | Ex. SS Amend. to D/T dtd. 1/17/64 | Ex. QQ Codicil Dtd. 1/17/64 | Ex. RR Right o Sepulc Dtd. 1/ |
| 1 | Mary H. Townsend | | | | | | | First life estate | | | Technical Changes and postponement of ultimate vesting of remainders. | |
| 2 | Mary H. Townsend's Executors | | | | | | | | | | | |
| 3 | Mary H. Townsend's Trustees U/D dated July 11, 1963 | | | | | | | | Entire Residue | | | |
| 4 | American Cancer Society | | | | | | | | | | | |
| 5 | Augustinian Seminary at Villanova | | 10000.00 | | | | | | 10000.00 | | | |
| 6 | Gladys Ayres | | | | | | 5 000.00 | | 5000.00 | | | |
| 7 | Bryn Mawr Hospital | | | 10 000.00 | | | | | 10000.00 | | | |
| 8 | Children's Hospital of Phila. | | | 10 000.00 | | | | | 10000.00 | | | |
| 9 | Christian H. Cochran | | Cf. Note 1 | | Cf. Note 1 | | | Cf. Note 1 | | | | |
| 10 | Mary Townsend Cochran | | ditto | | ditto | | | ditto | | | | |
| 11 | Mary Townsend Cochran Descendants | | ditto | | ditto | | | ditto | | | | |
| 12 | Elisha Wilson Cook | | | | | | 1 00000 | | 1000.00 | | + Chev. auto | |
| 13 | Margaret A. Cook | | | | | | 1000.00 | | 1000.00 | | | |
| 14 | Edward A. Durkin, M.D. | | | | | | 1000 0.00 | | 10000.00 | | | |
| 15 | Msgr. Farrell as Pastor of St. Monica's Church | | | 50 00000 | | | | | 50000.00 | | | |
| 16 | Father Flanagan's Boys' Home | | 10000.00 | | | | | | 10000.00 | | | |
| 17 | Fay Gildersleeve | | 5 000.00 | | | | | | 5000.00 | | | |
| 18 | Lillian Glass or | 5000.00 | 5000.00 | 5000.00 | | | | | 5000.00 | | | |
| 19 | Charles Glass | | | - 0 - | | | | | | | | |
| 20 | Ann Gunther | | 5000.00 | | | | | | 5000.00 | | | |
| 21 | Kay Gunther | | 5000.00 | | | | | | 5000.00 | | | |
| 22 | Mary Gunther | | 5000.00 | | | | | | 5000.00 | | | |
| 23 | Lillian R. Kelly | 50000.00 | 50000.00 | | | | + $400./mo | $400/mo. | 50000.00 | | | + bur Fig |
| 24 | Archbishop John J. Krol, Archbishop of Philadelphia | | 10000.00 | | | | | | 10000.00 | | | |
| 25 | Bishop Leonard's Charities, Inc. | | Cf. Note 2 | | | | | | Cf. Note 2 | | | |
| 26 | Henry Lang | | | | | | | | | | | |
| 27 | Elsbeth W. McKeever | | 5 000.00 | | | | | | 5 000.00 | | | |
| 28 | Mary C. Maguire Modest part of | Life int. in residuary est. | - 0 - | | | | | | | | | |
| 29 | Joseph F. Maguire | | 10000.00 | | | | | | 10000.00 | | 200 00.00 | |
| 30 | Missionary Sisters of Sacred Heart Orphanage | | Cf. Note 1 | | Cf. Note 1 | | | Cf. Note 1 | | | | |
| 31 | George N. Morris or Carolyn B. Morris | | 50000.00 | | | | + 25000.00 | | 75000.00 | | | |
| 32 | George N. Morris | | | | | | | | | | | |
| 33 | Phila. Museum of Art | | | | | | | | | | | |
| 34 | Father Reynolds as Pastor of St. John Vianney Church | | | 50 00.00 | | | | | 50000.00 | | | |
| 35 | Almira Saunders | | | | | | | | | | | |
| 36 | Russell Saunders | | | | | | | | | | | |
| 37 | Elizabeth T. Stoebenau | | 5000.00 | | | | | | 5000.00 | | | |
| 38 | St. Vincent's Hospital for Women and Children | | | 20000.00 | | | | | 20000.00 | | | |
| 39 | May Wainwright | | 5000.00 | | | | | | 5000.00 | | | |
| 40 | Mrs. Katharine M. Watt | Cf. Note 2 | Cf. Note 2 | | | | | | Cf. Note 2 | | | |

ADMITTED TO PROBATE 1/21/64 GENUINE

KNOWN ORIGINALS DATED PRIOR TO 1/1/63 CLAIMED FORGED

KNOWN ORIGINALS DATED AFTER 1/1/63 FORGED

OMITTED AND ALLEGED TESTAMENTARY DOCUMENTS
SEND DATED AFTER DECEMBER, 1960

| FORGED | FORGED | NO ORIGINAL | FORGED | FORGED | FORGED | FORGED | FORGED | FORGED | FORGED |
|---|---|---|---|---|---|---|---|---|---|
| . PP<br>11 Dtd.<br>11/63 | Ex. SS<br>Amend. to<br>D/T dtd.<br>1/17/64 | Ex. QQ<br>Codicil Dtd.<br>1/17/64 | Ex. RR<br>Right of<br>Sepulchre<br>Dtd. 1/17/64 | Ex. Three<br>Amend. to<br>D/T dtd.<br>2/20/64 | Ex. TT<br>Codicil<br>Dtd. 2/20/64 | Ex. Four<br>Amend. to<br>D/T dtd.<br>3/6/64 | Ex. UU<br>Codicil Dtd.<br>3/6/64 | Ex. Five<br>Amend. to<br>D/T Dtd.<br>6/14/65 | Ex. One<br>Will dtd.<br>6/14/65 |
| tire<br>idue<br>10000.00 | | Technical Changes and postponement of ultimate vesting of remainders. | | | Personal Effects | 1/4 residue | | 1/4 residue<br>10000.00 | Personal Effects Entire Residue |
| 5000.00<br>10000.00<br>10000.00 | | | | One-third residue<br>One-third residue<br>Cf. Note 1 | Cf. Note 1 | 1/4 residue<br>1/4 residue | | 5000.00<br>1/4 residue<br>1/4 residue<br>10000.00 | |
| 1000.00<br>1000.00<br>0000.00<br>0000.00 | | ditto<br>+ Chev. auto. | | ditto | ditto<br>+Chev.auto | | | - 0 -<br>- 0 -<br>10000.00<br>500 000.00 | |
| 0000.00<br>5000.00<br>5000.00<br>5000.00 | | | | | | 1/4 residue | - 0 - | 1/4 residue<br>5000.00<br>5000.00<br>5000.00 | |
| 5000.00<br>5000.00<br>0000.00<br>0000.00<br>Note 2 | | + burial rights | | | | | | 5000.00<br>5000.00<br>50000.00<br>+$400./mo.<br>10000.00<br>Cf. Note 2 | |
| 5 000.00<br>10000.00 | | 200 000.00 | | Cf. Note 1 | 200000.00 | | | 1000.00<br>5000.00<br>200000.00 | |
| 75000.00<br>50000.00 | | | | One-third residue | 100 000.00 | - 0 - | | 75000.00<br>100 000.00<br>1000.00 | |
| 5000.00<br>20000.00<br>5000.00<br>Note 2 | | | | | 25000.00 | | | 1000.00<br>5000.00<br>20 000.00<br>25 000.00<br>Cf. Note 2 | |

NOTE 1 to APPENDIX II

Mary Townsend
pal beneficiaries under
least as far back as her
to which there were two
band's death in December
and the other April 26,
ments are not abstracted
Cochran and her husband
with their descendants,
ultimately the residue.
the event of complete fa
of the Sacred Heart Orph
added Mrs. Townsend's pe
benefits. This general
forgeries (all documents
in this category) not on
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Amendments although bene
as shown on the Chart.
of Trust Amendment (Ex.
legedly increased Mrs. C
$100,000.00, left Mr. Co
ated all other Cochran f
eliminated the contingen
The June 16, 1965 allege
Mrs. Cochran's legacy ba

NOTE 2 to APPENDIX II

From February
either in her Will or i
trust of $100,000.00 fo
interest and/or princip
the income but not less
executors or trustees a
$1,000.00 for her funer
struments a separate $1
to Bishop Leonard's Cha

| FORGED Ex. Three Amend. to D/T dtd. 2/20/64 | FORGED Ex. TT Codicil Dtd. 2/20/64 | FORGED Ex. Four Amend. to D/T dtd. 3/6/64 | FORGED Ex. UU Codicil Dtd. 3/6/64 | FORGED Ex. Five Amend. to D/T Dtd. 6/14/65 | FORGED Ex. One Will dtd. 6/14/65 |
|---|---|---|---|---|---|
| | Personal Effects | 1/4 residue | | 1/4 residue<br>100000.00 | Personal Effects<br>Entire Residue |
| One-third residue<br>One-third residue | | 1/4 residue<br>1/4 residue | | 5000.00<br>1/4 residue<br>1/4 residue | |
| Cf. Note 1<br>ditto | Cf. Note 1<br>ditto | | | 100000.00<br>100000.00 | |
| ditto | ditto<br>+Chev.auto | | | - 0 -<br>- 0 -<br>10000.00<br>500 000.00 | |
| | | 1/4 residue | - 0 - | 1/4 residue<br>5000.00<br>5000.00<br>5000.00 | |
| | | | | 5000.00<br>5000.00<br>50000.00<br>+$400./mo.<br>10000.00<br>Cf. Note 2 | |
| Cf. Note 1 | 200000.00 | | | 1000.00<br>5000.00<br>200000.00 | |
| One-third residue | 100 000.00 | - 0 - | | 75000.00<br>100 000.00<br>1000.00 | |
| | 25000.00 | | | 1000.00<br>5000.00<br>20 000.00<br>25 000.00<br>Cf. Note 2 | |

## NOTE 1 to APPENDIX II

Mary Townsend Cochran and her family were the principal beneficiaries under the Wills of Mary Hanlon Townsend at least as far back as her Will dated October 30, 1953 (Ex. C) to which there were two Codicils executed prior to her husband's death in December 1960, one dated May 7, 1955 (Ex. D) and the other April 26, 1956 (Ex. E). These earlier instruments are not abstracted on the Chart but under them, Mrs. Cochran and her husband each received a $10,000.00 legacy and with their descendants, received the bulk of the income and ultimately the residue. There was a contingent remainder in the event of complete failure of issue to the Missionary Sisters of the Sacred Heart Orphanage. The June 12, 1961 Will (Ex. LL) added Mrs. Townsend's personal effects to Mrs. Cochran's benefits. This general plan was continued even under the forgeries (all documents dated after January 1, 1963 being in this category) not only under the Wills and Codicils but also under the alleged Deed of Trust of July 11, 1963 (Ex. Two) and Amendments although benefits to others were gradually increased as shown on the Chart. However, the Codicil (Ex. TT) and Deed of Trust Amendment (Ex. SS) both dated February 20, 1964, allegedly increased Mrs. Cochran's legacy from $10,000.00 to $100,000.00, left Mr. Cochran's legacy at $10,000.00 and eliminated all other Cochran family benefits. These instruments also eliminated the contingent remainder of the Missionary Sisters. The June 16, 1965 alleged Amendment to the "Deed of Trust" cut Mrs. Cochran's legacy back to $10,000.00.

## NOTE 2 to APPENDIX II

From February 23, 1961 on Mrs. Townsend provided either in her Will or in her principal "Deed of Trust" a trust of $100,000.00 for Mrs. Katharine M. Watt from the interest and/or principal of which she was to receive all the income but not less than $5,000.00 per year. Decedent's executors or trustees also had discretion to spend up to $1,000.00 for her funeral and the residue, or under some instruments a separate $100,000.00 in lieu thereof, was to go to Bishop Leonard's Charities, Inc.